

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERBALIST & ALCHEMIST, INC.

Plaintiff,

- against -

ALURENT PRODUCTS, INC. and WILL CLAREN,

Defendants.

Civil No. 16-cv-09204-ER

**DECLARATION OF
MONICA P. MCCABE IN
SUPPORT OF MOTION
FOR ATTORNEYS' FEES,
COSTS AND SANCTIONS**

Monica Petraglia McCabe hereby declares as follows:

1. I am counsel for the Plaintiff Herbalist & Alchemist, Inc. ("Herbalist" or "Plaintiff") in this action. I supervised the other attorneys, Kathryn T. Lundy, Janeen R. Hall, and Rachel M. Bandli, and the paralegals working on this matter.

2. Monica P. McCabe is a partner at Phillips Nizer LLP in New York. She has been representing clients in intellectual property for more than 25 years. She has handled numerous trademark disputes and litigations. She has written and edited articles and books and made various presentations regarding trademarks, copyrights and other intellectual property topics. Ms. McCabe received her B.A. from Fordham University, *summa cum laude* in 1981, her M.A. from the University of Chicago in 1984, and her J.D. from Georgetown University Law Center, *cum laude* in 1985. She was admitted to the Bar of the State of New York in 1986 and the Bar of Washington, D.C. in 1987. Upon graduation, she clerked for the Honorable Arthur L. Burnett of the District Court for the District of Columbia. She is admitted to practice in the Southern District of New York, and the Eastern District of New York, U.S. Supreme Court, U.S. Ct. of Appeals, 2nd Circuit, and U.S. Ct. of Appeals, DC Circuit. Ms. McCabe is a member of the

International Trademark Association and was appointed to its Panel of Neutrals in 2012. She was also appointed as a mediator for the S.D.N.Y. Mediation Program.

3. Rachel M. Bandli is an Associate with Philips Nizer's Litigation Department. She received her A.B. from Harvard College, *with honors*, in 2011 and her J.D. from Columbia Law School in 2014. Upon graduating law school, she clerked for Justice Wilhelmina M. Wright of the Minnesota Supreme Court. She then entered private practice as a litigation associate for a national law firm. Ms. Bandli joined Phillips Nizer in 2017. She is admitted to the Bar of the States of New York and Minnesota and admitted to practice in the District of Minnesota. She has represented clients in complex commercial litigation matters and other intellectual property disputes, including trademark, trade secret, and patent matters.

4. Kathryn T. Lundy was formerly Counsel with Phillips Nizer's Litigation Department. She received her B.A. from Washington University in St. Louis, *with honors*, and her J.D. from Brooklyn Law School. Upon graduating law school in 2006, she entered private practice as a litigation associate for a law firm in New York. Ms. Lundy joined Phillips Nizer LLP in 2011 and departed in 2017. She is admitted to the Bar of the States of New York and New Jersey and admitted to practice in the Southern District of New York, the Eastern District of New York and the District Court of New Jersey. As part of her litigation practice at Phillips Nizer, she represented clients in complex commercial litigation matters and trademark and other intellectual property disputes. Ms. Lundy was selected as a "Rising Star" in 2013 and 2016 by *Super Lawyers*.

5. Janeen R. Hall was formerly an Associate with Phillips Nizer's Litigation Department. She received her B.A. from Wake Forest University and her J.D. from Brooklyn Law School. Before joining Phillips Nizer in 2016, she clerked for the Honorable Ronald L.

Ellis of the United States District Court for the Southern District of New York. While at Phillips Nizer, Ms. Hall practiced in the areas of general commercial litigation, employment litigation, real estate litigation, and intellectual property. She is admitted to the Bar of the States of New York and New Jersey and admitted to practice in the Southern District of New York, the Eastern District of New York and the District Court of New Jersey.

6. Kristine Grissett is a Legal Assistant in Phillips Nizer's Litigation Department. She provided support staff assistance when required. She received her Bachelor of Science degree from Pace University in 1993, and has been employed as a legal assistant since 1991.

7. Herbalist is entitled to recover its reasonable attorneys' fees and costs incurred in this action because they arise out of Defendants' willful disregard of this Court's orders. Indeed, Defendants have never responded in any way to any of the many court papers and orders that were served upon them. Since Herbalist's last motion for attorneys' fees (included as part of its default judgment submission in February 2017), Herbalist has incurred significant additional fees relating to the enforcement of this Court's orders against Defendants (and other infringing third parties).

8. These fees and costs were reasonable and necessary in order for Plaintiff to enforce its judgment against Defendants and to halt ongoing infringement of its trademark by both Defendants and third-party infringers. There were no extraordinary rates charged, and the standard rates of McCabe, Lundy, Bandli, and Hall are below the rates generally charged by intellectual property attorneys in this district. Any duplicative entries among the attorneys and paralegals were not charged to the client and are not part of the current fee application.

9. Annexed hereto as Exhibit A, are true and correct copies of Phillips Nizer LLP's invoices billed to Herbalist for the period March 1, 2017, through January 31, 2018. The

invoices have been redacted to remove any attorney-client privileged information. Plaintiff has previously requested and received attorneys' fees for the period ending February 28, 2017.¹

10. The total additional fees incurred since February 28, 2017, amount to \$138,556.00. The total additional disbursements incurred since February 28, 2017, amount to \$9,159.28. The total of **all** fees and costs incurred since February 28, 2017, due to Defendants' failure to comply with this Court's orders, is \$147,715.28.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

Dated: New York, New York
February 22, 2018

PHILLIPS NIZER LLP

By:


Monica Petraglia McCabe

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¹ The first invoice of Exhibit A, dated April 27, 2017, includes four entries from February 2017. These entries were not included on the invoices previously submitted to the court, nor has Plaintiff previously requested the award of these fees from the Court.